



ENVIRONMENTAL PROTECTION AGENCY

[EPA-HQ-OW-2020-0392; FRL 8323.1-01-OW]

Draft Guidance for Vessel Sewage No-Discharge Zones

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of availability; request for comment.

SUMMARY: The Environmental Protection Agency (EPA) requests comments on draft updated guidance for state officials submitting applications to EPA to establish vessel sewage no-discharge zones under the Clean Water Act (CWA). The draft updated guidance is intended to clarify, simplify, and (once finalized) supersede EPA's existing vessel sewage no-discharge zone guidance. The draft updated guidance explains the information that a state must submit to EPA in an application to meet the regulatory requirements and provides greater insight into EPA's process for evaluating applications. Updates made to the guidance do not purport to impose any new requirements for state applications.

DATES: Comments must be received on or before **[INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

ADDRESSES: You may send comments, identified by Docket ID No. EPA-HQ-OW-2020-0392, by any of the following methods:

- Federal eRulemaking Portal: <https://www.regulations.gov/> (our preferred method). Follow the online instructions for submitting comments.
- Mail: U.S. Environmental Protection Agency, EPA Docket Center, Office of Water Docket, Mail Code 28221T, 1200 Pennsylvania Avenue NW, Washington, DC 20460.
- Hand Delivery or Courier: EPA Docket Center, WJC West Building, Room 3334, 1301 Constitution Avenue, NW, Washington, DC 20004. The Docket Center's

hours of operations are 8:30 a.m. – 4:30 p.m., Monday – Friday (except Federal Holidays).

Instructions: All submissions received must include the Docket ID No. for this rulemaking. Comments received may be posted without change to <https://www.regulations.gov/>, including any personal information provided. For detailed instructions on sending comments and additional information on the rulemaking process, see the “Public Participation” heading of the **SUPPLEMENTARY INFORMATION** section of this document.

FOR FURTHER INFORMATION CONTACT: Kelsey Watts-FitzGerald, Oceans, Wetlands, and Communities Division, Office of Water (4504T), Environmental Protection Agency, 1200 Pennsylvania Avenue NW, Washington, DC 20460; telephone number: 202-566-0232; email address: watts-fitzgerald.kelsey@epa.gov.

SUPPLEMENTARY INFORMATION:

I. Public Participation

A. Written Comments

Submit your comments, identified by Docket ID No. EPA-HQ-OW-2020-0392, at <https://www.regulations.gov> (our preferred method), or the other methods identified in the **ADDRESSES** section. Once submitted, comments cannot be edited or removed from the docket. EPA may publish any comment received to its public docket. Do not submit to EPA’s docket at <https://www.regulations.gov> any information you consider to be Confidential Business Information (CBI), Proprietary Business Information (PBI), or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. EPA will generally not consider comments or comment contents located outside of the primary submission (i.e., on the web, cloud, or other file sharing system). Please visit

<https://www.epa.gov/dockets/commenting-epa-dockets> for additional submission methods; the full EPA public comment policy; information about CBI, PBI, or multimedia submissions; and general guidance on making effective comments.

II. General Information

A. Does this action apply to me?

EPA has developed an updated draft of existing guidance for the development of applications for vessel sewage no-discharge zones and seeks comment and technical input on issues associated with the guidance. The draft updated guidance will be of interest to state officials seeking to establish vessel sewage no-discharge zones, as well as the owners and operators of commercial and recreational vessels with installed toilets that may be impacted by vessel sewage no-discharge zone designations.

III. Background

CWA Section 312 establishes the statutory framework through which EPA and the U.S. Coast Guard regulate the discharge of sewage from vessels with installed toilets operating in U.S. navigable waters. EPA is responsible for establishing national standards of performance for marine sanitation devices (MSDs) to prevent inadequately treated sewage from polluting U.S. waters, while the U.S. Coast Guard is responsible for issuing regulations governing the design, construction, certification, installation, and operation of MSDs, consistent with EPA's standards. MSDs are equipment installed onboard vessels that either treat sewage prior to discharge or store sewage onboard for later disposal. If a state determines that some or all of the state's waters require greater protection, the CWA allows the state to apply to EPA for the establishment of a vessel sewage no-discharge zone.

Sewage no-discharge zones are designated areas where the discharge of both treated and untreated sewage from vessels is prohibited. There are three different types of vessel sewage no-discharge zones under CWA Section 312. For each type, the state must

submit an application to EPA pursuant to the regulatory requirements detailed in 40 CFR 140.4. The first type of designation (CWA Section 312(f)(3)) requires the state to obtain a determination from EPA that “adequate facilities for the safe and sanitary removal and treatment of sewage from all vessels are reasonably available for the waters proposed for designation.” Following an affirmative determination from EPA, the state may then proceed with the designation of the no-discharge zone through state regulations. The other two types of sewage no-discharge zones are established for the protection and enhancement of the quality of specified waters and drinking water intakes (under CWA Sections 312(f)(4)(A) and (f)(4)(B), respectively). These designations are applied for by a state but designated by EPA and promulgated through federal regulations.

In 1994, EPA published guidance, “Protecting Coastal Waters from Vessel and Marina Discharges: A Guide for State and Local Officials, Volume 1. Establishing No-Discharge Areas under § 312 of the Clean Water Act” (EPA 842-B-94-004, August 1994), to assist states in preparing applications based on the regulatory requirements. EPA is updating the 1994 guidance and, through this Notice, soliciting feedback from the public on the new draft, titled, “Guidance for Vessel Sewage No-Discharge Zone Applications (Clean Water Act Section 312(f)).” The draft updated guidance will supersede the 1994 guidance once public comments have been considered and a notice of availability for the updated guidance is published in the **Federal Register**.

In developing the draft updated guidance, EPA sought to streamline the guidance, better clarify the required versus recommended information for inclusion in a state’s application, and further describe the agency’s processes for evaluating an application. Key updates related to the development of state applications include the addition of new guidance and sample applications for the two CWA Section 312(f)(4) designations, as well as updated introductory sections on the impact of sewage discharges and the regulatory framework in place to mitigate these impacts. The draft updated guidance also

clarifies how to account for mobile pumpout facilities, such as boats and trucks, and provides additional information on how to demonstrate that sewage removed from vessels is being treated in conformance with federal law. Finally, in the sections pertaining to CWA Section 312(f)(3) applications, the draft updated guidance distinguishes between recreational and commercial vessels in acknowledgement of differing vessel profiles and pumpout facility needs.

Other updates were made to the 1994 guidance to explain EPA's process for evaluating state applications. The most substantial update to EPA's review process is the novel inclusion of a cost analysis for applications submitted under CWA Section 312(f)(3). The agency's statutory responsibility to determine whether adequate facilities are "reasonably available" speaks to the cost of that availability, as affirmed by the U.S. District Court for the District of Columbia (*see* Memorandum Opinion and Order, *American Waterways Operators v. EPA*, case no. 18-cv-2933 (APM), November 30, 2020). Because EPA must consider costs, the draft updated guidance contains new sections that propose how EPA would conduct cost analyses for CWA Section 312(f)(3) applications. These new sections are accompanied by a spreadsheet-based tool, the "No-Discharge Zone Cost Analysis Tool," that EPA could use in future determinations to help standardize the agency's approach to evaluating the costs associated with applications submitted under CWA Section 312(f)(3). The draft cost tool also incorporates a screening analysis to estimate if sewage generation may exceed reception capabilities. While the statute requires that EPA consider costs during the review of CWA Section 312(f)(3) applications, the agency welcomes comments on the proposed approach to the cost analysis. Another change is the removal of the "Boater Sanitary Waste Reception Facility Requirements Worksheet," which aggregated all vessel types, in favor of the new screening analysis described above for commercial vessels and a new "Recreational Vessel Worksheet" for recreational vessels.

IV. Paperwork Reduction Act

The information collections associated with the vessel sewage no-discharge zone program have been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act through August 2022. The approved Information Collection Request (OMB control number 2040-0187) estimates both the burden to state respondents to apply for vessel sewage no-discharge zones and the burden to EPA to review state applications. Finalization of this draft updated guidance is not expected to result in increased burden to state applicants, since the required elements of a state's application are defined by regulation and have not been changed. However, increased burden is anticipated for EPA due to the inclusion of a cost analysis for applications submitted under CWA Section 312(f)(3). EPA does not anticipate that the expected number of applications will change if this draft updated guidance is finalized, since preparation and submission of an application is entirely voluntary and driven by the state applicant's need to protect some or all of the state's waters from vessel sewage discharges.

EPA is currently in the process of requesting a renewal for this information collection. If finalization of this draft updated guidance results in a change to paperwork burden, EPA will revise the Information Collection Request.

V. Request for Comment

EPA is seeking public comment on both the draft updated guidance document and the associated draft cost tool. While EPA welcomes information and comments on all issues related to the guidance, this Notice requests specific comment, relevant information, or data on the following topics, as appropriate: (1) the types and availability of data and information being requested from state applicants, (2) whether additional clarifications are needed in any of the state application sections, (3) the appropriateness, use, and accuracy of default values and assumptions used in the draft cost tool, and (4)

how frequently the agency should update the default values used in the draft cost tool.

The draft updated guidance document and draft cost tool are available for review in EPA's docket and on EPA's website at <https://www.epa.gov/vessels-marinas-and-ports/guidance-vessel-sewage-no-discharge-zone-applications>.

Benita Best-Wong,

Deputy Assistant Administrator.

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